as executrix under N. Y. CODE CIV. PROC., §§ 1902–4, which allows the personal representative of the deceased to recover for the benefit of the widow or next of kin the pecuniary loss resulting from the death to the statutory beneficiaries. *Held*, that she may recover substantial damages. *Radley* v. *Le Ray Paper Co.*, 108 N. E. 86 (N. Y.).

The so-called death statutes modeled after Lord Campbell's Act have been generally held to create a new right, unknown to the common law, vesting in the statutory beneficiaries on the death of the injured person. *Meekin* v. *Brooklyn Heights R. R. Co.*, 164 N. Y. 145, 58 N. E. 50. See *Needham* v. *Grand Trunk Ry. Co.*, 38 Vt. 294, 304. *Contra, Dolson* v. *Lake Shore & M. S. Ry. Co.*, 128 Mich. 444, 87 N. W. 629. The right is thus not a survival of the deceased's cause of action and no damages can be recovered for personal injuries to him. *Meekin* v. *Brooklyn Heights R. Co.*, *supra*. Furthermore, the statute here grants recovery only for pecuniary loss suffered by the beneficiary, and it is settled that no damages for injuries to feelings and loss of companionship will be recognized. *Tilley* v. *Hudson River R. Co.*, 24 N. Y. 471. Therefore, though the plaintiff, as widow of the deceased, is clearly within the description of the statute and entitled to at least nominal damages, she cannot claim, as widow, damages received as *fiancée*, since no right of action is given a *fiancée*. Hence the measure of her recovery should be her husband's probable expectancy of life at the time of the marriage. To be sure, a posthumous child has been allowed to recover damages based on the father's expectancy at the time of the accident. *The George & Richard*, 1 L. R. 3 A. & E. 466, 480; *Nelson* v. *Galveston, H. & S. A. Ry. Co.*, 78 Tex. 621, 14 S. W. 1021. But this recovery can only rest upon the inchoate right of an unborn child to the support of its parent, — a right peculiar in that it is broken as soon as it arises. See 15 HARV. L. REV. 313. It is submitted that a *fiancée* has no analogous inchoate right to the support of her future husband in addition to her rights arising from the contract to marry. Yet the principal case is in accord with the only other direct authority on the point. *Gross* v. *Electric Traction Co.*, 180 Pa. St. 99, 36 Atl. 424.

DEEDS — CONSTRUCTION AND OPERATION IN GENERAL — EFFECT OF REDELIVERY OF AN UNRECORDED DEED TO THE GRANTOR IN ORDER TO DIVEST TITLE FROM THE GRANTEE. — The plaintiff sold land and, to avoid recording his own deed, redelivered it to his grantor and had a deed made directly to the purchaser, who entered into possession, paid the full purchase price and made various improvements. The plaintiff now tries to recover back the land upon the ground that, since the contract was by parol, he was not divested of his legal title. *Held*, that the plaintiff is estopped from asserting his title. *Rowe* v. *Epling*, 173 S. W. 801 (Ky. App.).

Under the recording acts, the title of a vendee cannot be defeated by an unrecorded deed of which he had no notice. *Ely* v. *Brewer*, 62 So. 742 (Ala.). But ordinarily the purchaser would have full notice of the prior deed in situations like that in the principal case, and cannot claim protection on this theory. And the weight of authority holds that the statute of frauds prevents the revesting of title in the grantor by the mere redelivery or cancellation of the deed. *Botsford* v. *Morehouse*, 4 Conn. 550. *Contra, Commonwealth* v. *Dudley*, 10 Mass. 403. See 1 DEVLIN, DEEDS, 3 ed., § 300. But the courts usually give the new purchaser relief on the ground that the grantee is estopped from asserting his legal title. *Potter* v. *Adams*, 125 Mo. 118, 28 S. W. 490; *Howard* v. *Huffman*, 3 Head (Tenn.) 562. *Contra, Raynor* v. *Wilson*, 6 Hill (N. Y.) 469. The elements of a strict estoppel are not present if it be assumed that the vendee knows the real situation. But the result may be supported upon the theory that the grantee, by deliberately destroying the evidence of his title, is precluded from setting up secondary evidence to defeat his intention.

Gugins v. *Van Gorder*, 10 Mich. 523; *Parker* v. *Kane*, 4 Wis. 1, 12; *Farrar* v. *Farrar*, 4 N. H. 191, 195. See 18 HARV. L. REV. 105, 110. Other jurisdictions protect the purchaser by enjoining the grantee from setting up his legal title. *Russell* v. *Meyer*, 7 N. D. 335, 75 N. W. 262; *Reavis* v. *Reavis*, 50 Ala. 60. And wherever the transaction between the grantee and his vendee is itself in writing, or is taken out of the statute of frauds by part performance, as in the principal case, the vendee's equity for specific performance independently secures him against the grantee's assertion of his legal title. *Whisenant* v. *Gordon*, 101 Ala. 256, 13 So. 914.

EMINENT DOMAIN — WHEN IS PROPERTY TAKEN — LOSS CAUSED BY FEDERAL SHIFTING OF HARBOR LINES. — Pursuant to the authority given him by Congress to fix harbor lines in waters navigable for interstate purposes beyond which riparian owners should not build, the Secretary of War fixed a line in the Elizabeth River which took in the plaintiff's wharf. The plaintiff showed that his wharf had been erected in conformity with state regulation, and also did not transgress an earlier federal line established after his wharf was built, and asked that an injunction issue to prevent its destruction without compensation. *Held*, that the relief will be denied. *Greenleaf Johnson Lumber Co.* v. *Garrison*, 237 U. S. 251.

For a discussion of the principles involved, see NOTES, p. 806.

EVIDENCE — DECLARATIONS CONCERNING INTENTION, FEELINGS, OR BODILY CONDITION — EXPRESSIONS OF PRESENT PAIN MADE TO A PHYSICIAN AT AN EXAMINATION TO QUALIFY HIM AS A WITNESS. — The defendant's physician examined the plaintiff's injured ankle, not for the purpose of giving medical treatment, but to qualify as a witness at the trial then pending. He was permitted to testify that, upon pressure on the injured part, the plaintiff flinched. The defendant objected that such flinching was a mere declaration of the plaintiff made to a physician for the sole purpose of enabling him to testify. *Held*, that the testimony is inadmissible. *Norris* v. *Detroit United Ry.*, 151 N. W. 747 (Mich.).

Expressions of present pain, if involuntary, are admissible, without reference to the hearsay rule. When voluntary, like other attempts to convey thought, they possess a hearsay character, but are nevertheless generally admitted under an exception to the hearsay rule. See 3 WIGMORE, EVIDENCE, § 1718. Though a few jurisdictions confine the exception to declarations made to a physician, they are generally held admissible no matter to whom made. *Indiana Ry. Co.* v. *Maurer*, 160 Ind. 25, 66 N. E. 156; *Baltimore & Ohio R. Co.* v. *Rambo*, 8 C. C. A. 6, 59 Fed. 75. *Contra*, *Reed* v. *New York Central R. Co.*, 45 N. Y. 574; *Lake St. El. R. Co.* v. *Shaw*, 203 Ill. 39, 67 N. E. 374. And the mere fact that litigation has begun is not a sufficient bar. *Matteson* v. *New York Central R. Co.*, 35 N. Y. 487. *Cf. Mott* v. *Detroit, etc. Ry. Co.*, 120 Mich. 127, 79 N. W. 3. However, in many jurisdictions a strict limitation is placed upon the exception where, as in the principal case, the declaration was made to a physician to enable him to testify in an action for the injury. *Grand Rapids & Indiana R. Co.* v. *Huntley*, 38 Mich. 537; *Darrigan* v. *New York & New England R. Co.*, 52 Conn. 285. *Contra*, *Quaife* v. *Chicago, etc. Ry. Co.*, 48 Wis. 513, 4 N. W. 658; *Kent* v. *Lincoln*, 32 Vt. 591. A few jurisdictions confine this restriction to cases where the plaintiff himself calls the physician for the sole purpose of securing his testimony. *Abbot* v. *Heath*, 84 Wis. 314, 54 N. W. 574. But such a distinction is unwarranted, for the danger of fraud and pretence on the plaintiff's part when he has the litigation so closely in mind, is present no matter who called the physician. However, rather than fix for all cases any binding limitation of this sort, it would seem better to let the judge in his discretion determine whether the chance for imposition and